

## APPENDIX A

---

### STATUTES HAVING A BEARING UPON THE QUESTIONS INVOLVED

Title II of the National Prohibition Act contains the following provisions:

SEC. 1. When used in Title II or Title III of this Act \* \* \*

(5) The term "permit" shall mean a formal written *authorization by the commissioner setting forth specifically therein the things that are authorized.*

(6) The term "bond" shall mean an obligation authorized or required by or under this Act or any regulation, *executed in such form and for such a penal sum as may be required by a court, the commissioner* or prescribed by regulation. (Italics ours.)

(7) The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this Act, and the commissioner is authorized to make such regulations.

SEC. 3. \* \* \* all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

SEC. 4. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to the provisions of this Act if they correspond with the following descriptions and limitations, namely:

(a) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereafter in force.

(b) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy that are unfit for use for beverage purposes.

(c) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(d) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(e) Flavoring extracts and sirups that are unfit for use as a beverage, or for intoxicating beverage purposes.

(f) Vinegar and preserved sweet cider.

A person who manufactures any of the articles mentioned in this section may purchase and possess liquor for that purpose, but he shall secure permits to manufacture such articles and to purchase such liquor, give the bonds, keep the records, and make the reports specified in this Act and as directed by the commissioner. No such manufacturer shall sell, use, or dispose of any liquor otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, sirup, or the articles named in paragraphs b, c, and d of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation of the article.

Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c, and d of this section for beverage purposes, or any extract or sirup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from

which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, sirup, or other article is used as an ingredient, shall be subject to the penalties provided in section 29 of this Title. If the commissioner shall find, after notice and hearing as provided for in section 5 of this Title, that any person has sold any flavoring extract, sirup, or beverage in violation of this paragraph, he shall notify such person, and any known principal for whom the sale was made, to desist from selling such article; and it shall thereupon be unlawful for a period of one year thereafter for any person so notified to sell any such extract, sirup, or beverage without making an application for, giving a bond, and obtaining a permit so to do, which permit may be issued upon such conditions as the commissioner may deem necessary to prevent such illegal sales, and in addition the commissioner shall require a record and report of sales.

SEC. 5. Whenever the commissioner has reason to believe that any article mentioned in section 4 does not correspond with the descriptions and limitations therein provided, he shall cause an analysis of said article to be made, and if, upon such analysis, the commissioner shall find that said article does not so correspond, he shall give not less than fifteen days' notice in writing to the person who is the manufacturer thereof to show cause why said article should not be dealt with as an intoxicating liquor, such notice to be served personally or by registered mail, as the commissioner may determine, and shall specify the time when, the place where, and the name of the agent or official before whom such person is required to appear.

If the manufacturer of said article fails to show to the satisfaction of the commissioner that the article corresponds to the descriptions and limitations provided in section 4 of this Title, his permit to manufacture and sell such article shall be revoked. *The manufacturer may by appropriate proceeding in a court of equity have the action of the commissioner reviewed, and the court may affirm, modify, or reverse the finding of the commissioner as the facts and law of the case may warrant,* and during the pendency of such proceedings may restrain the manufacture, sale, or other disposition of such article. (Italics ours.)

SEC. 6. No one shall manufacture, sell, purchase, transport, or prescribe any liquor without first obtaining a permit from the commissioner so to do, except that a person may, without a permit, purchase and use liquor for medicinal purposes when prescribed by a physician as herein provided, and except that any person who in the opinion of the commissioner is conducting a bona fide hospital or sanatorium engaged in the treatment of persons suffering from alcoholism, may, under such rules, regulations, and conditions as the commissioner shall prescribe, purchase and use, in accordance with the methods in use in such institution, liquor, to be administered to the patients of such institution under the direction of a duly qualified physician employed by such institution.

All permits to manufacture, prescribe, sell, or transport liquor, may be issued for one year, and shall expire on the 31st day of December next succeeding the issuance thereof: *Provided*, That the commissioner may without formal application or new bond extend any permit granted under this Act or laws now in force after August 31 in any year to December 31 of the succeeding year: *Provided further*,

That permits to purchase liquor for the purpose of manufacturing or selling as provided in this Act shall not be in force to exceed ninety days from the day of issuance. A permit to purchase liquor for any other purpose shall not be in force to exceed thirty days. Permits to purchase liquor shall specify the quantity and kind to be purchased and the purpose for which it is to be used. No permit shall be issued to any person who within one year prior to the application therefor or issuance thereof shall have violated the terms of any permit issued under this Title or any law of the United States or of any State regulating traffic in liquor. No permit shall be issued to any one to sell liquor at retail, unless the sale is to be made through a pharmacist designated in the permit and duly licensed under the laws of his State to compound and dispense medicine prescribed by a duly licensed physician. No one shall be given a permit to prescribe liquor unless he is a physician duly licensed to practice medicine and actively engaged in the practice of such profession. Every permit shall be in writing, dated when issued, and signed by the commissioner or his authorized agent. It shall give the name and address of the person to whom it is issued *and shall designate and limit the acts that are permitted and the time when and place where such acts may be performed.* No permit shall be issued until a verified, written application shall have been made therefor, setting forth the qualification of the applicant and the purpose for which the liquor is to be used.

The commissioner *may prescribe the form of all permits and applications and the facts to be set forth therein.* Before any permit is granted the commissioner may require a

bond in such form and amount as he may prescribe to insure compliance with the terms of the permit and the provisions of this title.

In the event of the refusal by the commissioner of any application for a permit, the applicant may have a review of his decision before a court of equity in the manner provided in section 5 hereof. (Italics ours.)

SEC. 9. If at any time there shall be filed with the commissioner a complaint under oath setting forth facts showing, or if the commissioner has reason to believe, that any person who has a permit is not in good faith conforming to the provisions of this Act, or has violated the laws of any State relating to intoxicating liquor, the commissioner or his agent shall immediately issue an order citing such person to appear before him on a day named not more than thirty and not less than fifteen days from the date of service upon such permittee of a copy of the citation, which citation shall be accompanied by a copy of such complaint, or in the event that the proceedings be initiated by the commissioner with a statement of the facts constituting the violation charged, at which time a hearing shall be had unless continued for cause. Such hearings shall be held within the judicial district and within fifty miles of the place where the offense is alleged to have occurred, unless the parties agree on another place. If it be found that such person has been guilty of willfully violating any such laws, as charged, or has not in good faith conformed to the provisions of this Act, such permit shall be revoked, and no

permit shall be granted to such person within one year thereafter. Should the permit be revoked by the commissioner, the permittee may have a review of his decision before a court of equity in the manner provided in section 5 hereof. During the pendency of such action such permit shall be temporarily revoked.

SEC. 29. \* \* \* Any person violating the provisions of any permit, \* \* \* shall be fined for a first offense not more than \$500;  
\* \* \*

Title III of the Act contains the following provisions:

SEC. 10. Upon the filing of application and bond and issuance of permit denaturing plants may be established upon the premises of any industrial alcohol plant, or elsewhere, and shall be used exclusively for the denaturation of alcohol by the admixture of such denaturing materials as shall render the alcohol, or any compound in which it is authorized to be used, unfit for use as an intoxicating beverage.  
\* \* \*

SEC. 11. Alcohol produced at any industrial alcohol plant or stored in any bonded warehouse may, under regulations, be withdrawn tax free as provided by existing law from such plant or warehouse for transfer to any denaturing plant for denaturation, or may, under regulations, before or after denaturation, be removed from any such plant or warehouse for any lawful tax-free purpose.  
\* \* \* \* \*

But any person permitted to obtain alcohol tax free, \* \* \* shall first apply for and secure a permit to purchase the same and give the bonds prescribed under Title II of this Act, \* \* \*.

SEC. 13. The commissioner shall from time to time issue regulations respecting the establishment, bonding, and operation of industrial alcohol plants, denaturing plants, and bonded warehouses authorized herein, and the distribution, sale, export, and use of alcohol which may be necessary, advisable, or proper, to secure the revenue, to prevent diversion of the alcohol to illegal uses, and to place the nonbeverage alcohol industry and other industries using such alcohol as a chemical raw material or for other lawful purpose upon the highest possible plane of scientific and commercial efficiency consistent with the interests of the Government, and which shall insure an ample supply of such alcohol and promote its use in scientific research and the development of fuels, dyes, and other lawful products.

SEC. 15. Whoever operates an industrial alcohol plant or a denaturing plant without complying with the provisions of this title and lawful regulations made thereunder, or whoever withdraws or attempts to withdraw or secure tax free any alcohol subject to tax, or whoever otherwise violates any of the provisions of this title or of regulations lawfully made thereunder shall be liable, for the first offense, to a penalty of not exceeding \$1,000, or imprisonment not exceeding thirty days, or both, and for a second or cognate offense to a



penalty of not less than \$100 nor more than \$10,000, and to imprisonment of not less than thirty days nor more than one year. It shall be lawful for the commissioner in all cases of second or cognate offense to refuse to issue for a period of one year a permit for the manufacture or use of alcohol upon the premises of any person responsible in any degree for the violation.

## APPENDIX B

### THE REGULATIONS

Regulations 61 (Ed. July, 1920), Part 1, entitled "Regulations Relating to the Manufacture and Distribution of Industrial Alcohol," provides, in Article 3:

\* \* \* \* \*

The term "permit" shall mean a formal written authorization by the commissioner setting forth specifically therein the things that are authorized.

The term "bond" shall mean an obligation required by or under the National Prohibition Act, or any regulation, executed in such form and for such a penal sum as may be required by a court, the commissioner, or prescribed by regulation.

The term "regulation" shall mean any regulation prescribed by the commissioner with the approval of the Secretary of the Treasury for carrying out the provisions of this act.

Part 2 of Regulations 61, entitled "Regulations Relative to the Manufacture, Sale, Use, and Exportation of Denatured Alcohol under Title III of the National Prohibition Act," contains the following provisions:

#### *Definitions*

ARTICLE 92. Denatured alcohol is ethyl alcohol to which has been added some material

which prevents its use for internal administration. It is free of tax and is solely for use in the arts and industries.

Completely denatured alcohol is alcohol which has been denatured by a limited number of fixed formulae, for sale to the general public with very little supervision. All of the products produced by these formulae are injurious to the human system.

Specially denatured alcohol is alcohol which is not as completely denatured as the "completely," and can only be obtained under a heavy bond for use in manufacturing processes in which the alcohol is always protected by the bond.

ART. 93. Alcohol may be withdrawn free of tax for denaturation in an approved denaturing plant as hereinafter provided. Rum must be denatured in accordance with the provisions of Regulations No. 30.

#### *Denaturing Plants*

ART. 94. Such plants may be situated on and constitute a part of an industrial alcohol plant premises or may be established elsewhere. They may be a part of the same building in which an industrial alcohol plant or bonded warehouse is located, but in every case denaturing plants shall be completely separated from all other buildings or parts of buildings, and no windows, doors, or other openings shall be permitted in the walls of a denaturing plant, leading into any other room or building, except as hereinafter provided. Where, however, a room is used the door of

same may open into an elevator shaft or passageway leading either directly or through another elevator shaft or passageway to the street or yard. Such plants must be so constructed as to afford the same security to the alcohol stored therein as is contemplated in regulations governing the establishment of bonded warehouses. (See pt. 1.)

Denaturing plants will be numbered serially in the order of their establishment without regard to collection districts.

Each such plant shall be used solely for the purposes hereinafter set forth and shall be under the control of the collector of the district and in the joint custody of the proprietor and the officer assigned thereto. No one shall be permitted to enter the plant buildings except in the presence of such officer, and the buildings shall be kept closed and the doors securely locked, except when some work incidental to the operation of such plant is being carried on. Suitable office accommodations must be provided for the officer on duty.

Each denaturing plant shall be provided with suitable facilities for denaturing alcohol, including closed storage, mixing and weighing tanks of sufficient capacity, and each tank must be supplied with a suitable measuring device whereby the contents will at all times be correctly indicated.

All tanks must be of metal unless otherwise authorized, of uniform dimensions from top to bottom, and numbered serially at each plant, and such tanks must have plainly and durably marked thereon their capacity in wine gallons.

All openings to storage tanks containing pure alcohol must be so arranged as to be securely fastened with approved padlocks. The keys of such locks are to remain in the sole custody of the officer in charge. The proprietor may also provide locks at his own expense, to be attached to any part of the equipment not secured with Government locks, as he may consider necessary, but in such cases the officer in charge shall be provided with duplicate keys.

Each denaturing plant must be provided with a denaturing material room, to be used solely for the storage of denaturing materials. Such room must be perfectly secure and must be so constructed as to render it impossible for anyone to enter during the absence of the officer in charge without the same being detected: *Provided, however,* That where the commissioner is satisfied that to thus limit the storage capacity for denaturants would hamper the denaturer in the proper conduct of his business the use of an additional room or rooms for the purpose may be permitted: *And provided further,* That permanently fixed metal tanks not necessarily inclosed in a room or building may be utilized for the storage of denaturants. Such tanks should, however, be so constructed that they can be securely locked and of such a size that they cannot be readily moved. The use of receptacles easily portable, such as metal drums, will not be allowed for such storage purposes.

Where alcohol is to be completely denatured one or more metal storage tanks for each denaturant must be provided. Each such

tank should be of uniform dimensions from top to bottom so as to insure accurate measurement, should be provided with a suitable measuring device, should have marked thereon its capacity in wine gallons, and should bear a distinctive serial number. Denaturants, when used only occasionally or in small quantities, may be stored in original packages in the denaturing material room.

Standard Slight locks shall be used for locking denaturing plants and denaturing material rooms. These locks will be furnished by the Government. The keys to such locks shall remain in the possession of the officer in charge, and under no circumstances will they be intrusted to any other than an officer duly authorized to receive the same.

All plants heretofore constructed must be made, so far as reasonably practicable, and as soon as possible, to conform to these requirements, and those hereafter constructed must be in actual conformity herewith.

#### *Application for Approval of Denaturing Plants*

Art. 95. Application for approval of denaturing plants must be filed with the collector of the district in quadruplicate, and must fully set forth the location, construction, and size of the plant, the size of all tanks and the purpose for which they are to be used, and the full name of the person, firm, or company intending to operate such plant.

The full names of individuals must be signed to every application. In case of a

copartnership the firm name must be written, followed by the signature of the partner authorized to sign for the firm. The names of all members of the copartnership must appear in the application. In case of a corporation, the corporate name must be written, followed by the signature and title of the officer duly authorized to sign for the corporation, together with the impression of the corporate seal, if any. Applications which do not contain all the information called for, or which are not executed in the manner required by these regulations, will be returned without approval for proper execution. Where the applicant is corporation, the application forwarded to the Commissioner of Internal Revenue should be accompanied by a copy of the articles of incorporation. Copies of the minutes of the meeting showing election of officers of the company, and of the by-law or resolution authorizing such officers, or any of them, to affix the corporate name and seal, should be filed with the collector in order that he may determine whether applications, bonds, and other papers are properly executed. Where the denaturing plant is established by the proprietor of an industrial alcohol plant in connection with the last-named plant, and articles of incorporation and evidence of authority to sign have already been furnished, no further papers of this character will be required.

The application in all cases will be made on part 1 of Form 1461, and should be accompanied by a plan of the plant and premises showing the arrangement of all tanks, the

number and capacity of each, with pipe connections. Such plan should be on good tracing linen, 15 by 20 inches in size, and should bear a certificate of accuracy signed by the proprietor and collector. When the proprietor makes material changes subsequent to the approval of the denaturing plant, such as the removal of tanks, or the addition of new tanks, the officer in charge will make in duplicate a report of such changes to the collector, who will at once transmit one copy of such report to the Commissioner of Internal Revenue. The commissioner, at any time, may require the filing of a new plan.

Upon receipt of the quadruplicate copies of the application and accompanying plan, the collector shall detail one of his deputies, or some other officer, who shall visit and inspect the plant and surrounding premises, and if he finds that the statements in the application are true, and that the denaturing plant and material room are constructed in conformity with the law and regulations, he will make report and recommendation accordingly. The collector will then indorse his approval or disapproval on the quadruplicate applications and transmit all copies, together with the plan, and copy of Form 1431, when required, to the Commissioner of Internal Revenue.

#### *Denaturing Plant Bond*

ART. 96. At the time of filing his application the applicant will also file with the collector, in duplicate, the prescribed bond, Form 1462, with sureties satisfactory to the



collector. The bond must be executed in accordance with the instructions printed thereon, and in a penal sum based upon the quantity of alcohol withdrawn for use in said business during a period of thirty days plus the quantity which may remain on hand and unused, but in no case less than \$10,000 nor more than \$100,000. The penal sums of bonds, Form 1462, will accordingly be fixed at \$10,000, where the quantity involved does not exceed 4,500 proof gallons, and for larger quantities in accordance with the following schedule:

4,501 to 6,500 proof gallons.....	\$15, 000
6,501 to 9,000 proof gallons.....	20, 000
9,001 to 11,000 proof gallons.....	25, 000
11,001 to 13,500 proof gallons.....	30, 000
13,501 to 15,500 proof gallons.....	35, 000
15,501 to 18,000 proof gallons.....	40, 000
18,001 to 20,000 proof gallons.....	45, 000
20,001 to 22,500 proof gallons.....	50, 000
22,501 to 25,000 proof gallons.....	55, 000
25,001 to 27,000 proof gallons.....	60, 000
27,001 to 29,500 proof gallons.....	65, 000
29,501 to 31,500 proof gallons.....	70, 000
31,501 to 34,000 proof gallons.....	75, 000
34,001 to 36,000 proof gallons.....	80, 000
36,001 to 38,500 proof gallons.....	85, 000
38,501 to 40,500 proof gallons.....	90, 000
40,501 to 43,000 proof gallons.....	95, 000
More than 43,000 proof gallons.....	100, 000

Upon receipt of the prescribed bond, the collector will, if same is satisfactory, indorse his approval or disapproval on the original and duplicate and forward the original to

the Commissioner of Internal Revenue. If accepted by the commissioner the bond will continue in force until revoked or canceled. An account will be kept with each bond, showing the quantity of alcohol in proof gallons withdrawn, and the quantity, denatured and duly accounted for.

#### *Denaturing-Plant Permit*

ART. 97. If the application is approved by the Commissioner of Internal Revenue, he will issue a permit on Form 1433, and assign the appropriate serial numbers to the plant and permit, which serial numbers will also be noted on the application and bond. The original permit and one copy of the application will be forwarded to the applicant. One copy of the permit and copy of the application will be forwarded to the proper Federal Prohibition Director, one copy of the permit and copy of the application will be forwarded to the collector, and one copy of the permit, copy of the application, and the original bond will be retained in the office of the commissioner.

In the event the commissioner disapproves the application, he shall note such disapproval on all copies thereof and return all papers filed to the collector, except one copy of the application to be retained in his office and one copy of same to be forwarded to the proper Federal Prohibition Director. The collector will retain one copy of the application for his files, and transmit the other papers to the applicant.

Permits issued will remain in force until voluntarily surrendered or revoked by the com-

missioner. Violation of any of the provisions of law or regulations relating to these plants or to the alcohol stored therein or denatured alcohol produced thereat may in the discretion of the commissioner work a revocation of permits.

Permits will be kept posted in some conspicuous place in the plant.

*Permit to Secure Alcohol*

ART. 98. Upon the issuance of permit, Form 1433, the applicant may obtain and denature alcohol free of tax provided an officer has been assigned and the denaturants to be used have been approved for that purpose, and the collector will issue to the proprietor, upon receipt of application, Form 1463, a withdrawal permit, Form 1464, in the case of denaturers filing bond in the penal sum of less than \$100,000, or permit or permits on Form 1465, where a bond in the penal sum of \$100,000 has been filed.

The permit, Form 1464 (where the penal sum of the bond is less than \$100,000), shall be issued for a fixed number of proof gallons and must be forwarded by the denaturer to the bonded warehouse or other denaturing plant with each order for alcohol to be shipped to such denaturing plant. The proprietor of each warehouse or plant making shipment shall enter on this permit the number of proof gallons shipped, and shall then return the permit to the applicant. Future like withdrawals may be made under such permit until the charges added thereon equal the full quantity of alcohol for which the permit

was issued. After the full quantity of alcohol covered by the permit has been obtained, the denaturer, on surrendering same to the collector, may receive from that officer a renewal permit covering the available balance under the bond given, i. e., the full quantity covered by the bond less the quantity already withdrawn and remaining unaccounted for.

Under bonds given in a penal sum of less than \$100,000 two or more permits may be issued, provided the same do not exceed in the aggregate the quantity of alcohol covered by the bond. Where, however, renewal permit is called for, in such cases the same is not to exceed the quantity covered by the permit previously issued and returned for cancellation, nor are renewal permits to be issued unless the available balance on the outstanding bond, to be ascertained as above provided, warrants the issuing of such new permits.

In case of denaturers filing bonds in a penal sum of \$100,000 a permit, Form 1465, should be forwarded by such denaturers to each bonded warehouse or denaturing plant from which it is proposed to secure alcohol, and the proprietor of such warehouse or plant shall not ship such alcohol until the permit is in his possession.

The collector shall keep a record of all permits, Form 1465, issued by him, and should a permit, Form 1433, be canceled he shall forthwith notify the proprietor of each bonded warehouse or denaturing plant holding such permits, Form 1465, and after such notice no further shipments can be made to that denaturing plant.

## APPENDIX C

TREASURY DEPARTMENT  
U. S. INTERNAL REVENUE  
Form 1461

Permit No. \_\_\_\_\_  
Plant No. \_\_\_\_\_

### APPLICATION FOR PERMIT TO OPERATE A DENATURING PLANT

UNDER TITLE III OF THE NATIONAL PROHIBITION ACT

\_\_\_\_\_, 192  
*To the Commissioner of Internal Revenue,*  
*Washington, D. C.*

APPLICATION IS HEREBY MADE BY (see note) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ for permit to operate a DENATURING PLANT under the  
name or style of \_\_\_\_\_

\_\_\_\_\_ in accordance with the provisions of Title III of the  
National Prohibition Act and regulations promul-  
gated thereunder, on the premises located at \_\_\_\_\_

\_\_\_\_\_  
(Street and number)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

Size and construction of building or buildings to  
be used \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE.—If an individual owner, give full name and address; if a  
copartnership, give the full name and address of each person to be  
interested in the operation; if a corporation, give name of corporation,  
State under the laws of which incorporated and, address of principal  
office.

## Reverse side

Size and location of material storage room or  
rooms: -----  
-----

Number of material storage tanks -----,  
capacity ----- wine gallons.

Number of alcohol storage tanks -----,  
capacity ----- wine gallons.

Number of mixing tanks -----,  
capacity ----- wine gallons.

Number of stills -----,  
capacity ----- wine gallons.

Number of weighing tanks -----,  
capacity ----- wine gallons.

Estimated quantity of alcohol to be received during  
a period of thirty days ----- proof gallons.

Subscribed and sworn to before me this -----  
day of -----, 192

(Sole owner, copartnership, or corporation.)

By -----

(Name of officer administering oath.)

(Title of officer.)

OFFICE OF THE  
COLLECTOR OF INTERNAL REVENUE,  
DISTRICT OF -----

-----, 192

I HEREBY CERTIFY that I have caused to be examined the premises herein described and find the statements and descriptions given to be true in every particular; that the said premises are in strict compliance with all the requirements of law and regulations. The application is, therefore, approved.

Collector.

Approval concurred in -----, 192

Commissioner.

## APPENDIX D

---

### SUMMARY OF TESTIMONY BEFORE THE DISTRICT COURT

#### *Testimony of Bogash, president of the Ma-King Company*

At the trial Bogash, called as a witness for the complainant, testified that he was president, and Joseph H. Klutsch was secretary, of the Ma-King Products Company; that said company had been organized by the witness, or at his instance, primarily to enable him to invest some of the money he had made out of the real estate business in which he had been engaged in Philadelphia since 1915 as a licensed broker and as a conveyancer for building and loan associations; that the Ma-King Company had established a plant for the manufacture of denatured alcohol at 925 Bowen Street, Philadelphia, at a cost, including equipment, of about \$35,000; that the witness had never been convicted or charged with violation of the laws of the United States or of any State; that he had never had any connection with the manufacture or sale of alcoholic liquor, legally or illegally, but that he had a fair idea of the commercial uses of denatured alcohol, and that in the event of the permit being granted, the Ma-King Company had a market for its output; that he had been associated with Mr. Klutsch as a partner in the real estate business from 1916 to 1923, during which time he had known the latter intimately, and that to his knowledge Mr. Klutsch had never been accused of violating the law. (R. 5-7.)

On cross-examination Bogash stated that he, Klutsch, and Benjamin H. Alperdt, the latter being in the automobile accessories business, were directors of the Ma-King Company, and that the witness owned 500 shares of the capital stock of that company and each of the other directors owned 100 shares, there being 300 shares unissued. The witness subsequently modified this by saying that a previous statement made by him to a "Mr. Mikesell," that Klutsch and Alperdt owned 50 shares of the capital stock, was correct. (R. 7.) He further testified that he was probably worth about \$100,000 and had been connected with the Loyalty Building and Loan Association, the United, the Baker Building and Loan Association, and the Duell Building and Loan Association; that his interest or relationship with the Duell Association was that of conveyancer; that the officers of that association were Jules Isaacs, elected president about a month previously in succession to Charles Haimowitz, former president; S. M. Citron, secretary; Samuel Sidell, vice president, and Joseph H. Lieberman, solicitor. Upon being asked whether he had named the treasurer, he said that the latter was Herman F. Fuerstein. The directors of the Duell Association were named by the witness as: Phillip Sklar, Thornton Byer, Benjamin Alperdt, Dr. Benjamin Benedict, Dr. J. M. Korrothers, Joseph C. Hindler, H. M. Fuerstein, Joseph H. Klutsch, Harry J. Bogash, Joseph H. Lieberman, and Jules Isaacs.

In response to further cross-examination the witness stated that Meyer Benedict was also a director, and that the witness understood that Benedict had a permit of some kind under the National Prohibition Act in 1920, but that the witness had no interest in



that permit or in the application therefor and had no financial interest in the accompanying bond given by Benedict, although his (Bogash's) signature appeared thereon as a witness; that the witness had no business association, other than in building and loan associations, with Charles Haimowitz, former president of the Duell Association and was not aware that Haimowitz had been engaged, regularly or irregularly, in the liquor business since the Prohibition Act; that the witness did not know that Samuel Sidell, named by him as vice president of the Duell Association, was president of the Penn Distilling Company in Philadelphia and did not know that Sidell was then under indictment for alleged violation of the National Prohibition Act. As to Samuel Citron, named by him as secretary of the Duell Association, the witness admitted knowledge that Citron was connected with a distillery, which the witness thought was called the Glenwood Distillery but did not know that said distillery had lost its permit in 1922. Responding to questions regarding one Maurice Meixler, the witness stated that Meixler was a stockholder in the Duell Association, but that the witness could not remember whether Meixler had been a director and had no knowledge that a permit had been granted under the National Prohibition Act to a distillery of which Meixler was vice president and that such permit had been subsequently revoked. (R. 7-11.)

Upon redirect examination Bogash testified that the shares of capita stock held by him, Kutsch, and Alperdt in the Ma-King Company were not he'd direct y or indirectly for the benefit of any other person; that the witness received no salary from the Duell Association except for drawing up

papers, mortgages, deeds and bonds in connection with settlements and conveyances; that aside from discussing business of the Duel Association on meeting nights with the directors charged with having violated the National Prohibition Act, and except for a few occasions when some of them might have dropped into his office to ask about some real estate, the witness had had no connection with said other directors; that except for placing the Benedict bond through the Fidelity Company and signing said bond as a witness, he had never had any discussion with the other directors regarding their activities in the liquor business. (R. 11-12.)

Upon recross-examination, the witness stated that neither he nor either of the other two directors of the Ma-King Company had any practical experience in denaturing alcohol and that no contract for employment in anticipation or expectation had been made with any experienced person to conduct such denaturing. (R. 12-13.)

*Testimony of Klutsch, secretary of the Ma-King Company*

Klutsch, upon direct examination, testified that he was formerly associated with Bogash in the real estate business, but that he then had no business other than the business venture in the Ma-King Company. He modified this statement, however, by saying that he was connected with the Duell Building and Loan Association, as he still acted with Bogash as conveyancer for that association; that he knew the officers and directors of said association by meeting them at directors' meetings; that he had no knowledge that any of them had been charged or suspected of violating the National Prohibition Act, and that none of

them had any connection directly or indirectly with the Ma-King Company; that the witness had never been convicted of or charged with any violation of law and had never been, legally or illegally, connected with the liquor or alcohol business. Upon cross-examination, Klutseh said that he had known the Duell Association practically since it started about four years previously.

*Testimony of Lieberman, solicitor of the Duell Association*

Joseph H. Lieberman, son-in-law of Alperdt, brother-in-law of Bogash, and cousin of Fuerstein, treasurer of the Duell Association, testified that he organized that association and was its solicitor. With reference to the persons connected with that association who were alleged to have been involved in violations of the National Prohibition Act, Lieberman stated that to his knowledge neither Fuerstein nor Lazarre had ever been charged with any violation of law; that he had known Sidell (the vice president of the Duell Association) only since about a year after the association started; that he believed that Sidell, who had been a stockholder and had been attending meetings, became an officer; that Citron was an auditor and accountant and when the witness first organized the association he had asked him to take the secretaryship; that Benedict was known to him only because he had at one time come into the witness's law office and was represented by one of the members of that office upon some charge in connection with prohibition, but that the witness knew that the information filed in that case against Benedict had been quashed for some legal reason; that the witness had known Bogash since they were

boys and that he knew the latter's association with the directors mentioned as having been accused of prohibition violation was only through the various directors' meetings of the Duell Association, which occurred regularly once a month and sometimes two or three times a month upon special call; that he had never heard of any suspicion expressed or accusation made against Bogash in connection with any liquor transactions; and that the latter's reputation was very good. The witness also testified that he had known Klutsch for about seven years, had never heard of any accusation against him in connection with the liquor business, and that his reputation was very good. As to Alperdt, the witness stated that he had at one time been engaged in the wholesale candy business but had conducted an automobile accessories business for the preceding five years, and that to the witness's knowledge Alperdt had never been accused or suspected of any violation of law.

Upon cross-examination this twiness stated that he did not know that Benedict had ever applied for or received a permit under the National Prohibition Act; that a Mr. Oleoseus, who was associated with the witness in the law business, represented Benedict in a prohibition matter in 1921; that the witness's signature to an affidavit made by Benedict in applying for a permit under the National Prohibition Act was affixed in the witness' capacity as a notary public, and that he may have taken other affidavits from Benedict in the same capacity; that the witness knew that Citron was secretary of the Glenwood Distillery in 1922, but did not know that the permit of that company had been revoked; that the witness believed that he had represented one Petgen, who was prosecuted for illegally transporting alcohol

while driving a truck for the Glenwood Distillery Company, but did not know whether the permit of that company had been revoked because of that transportation, or whether its permit had ever been revoked. (R. 15-19.)

*Testimony for the Government*

For the Government General Prohibition Agent Leo A. Connor testified that he had been assigned to the duty of looking into the records of the Government and of the State of Pennsylvania to ascertain the connections of Bogash and Klutsch following the filing of their application for a basic prohibition permit; that as the result of his investigation he had learned that Sidell, Samuel Lazarre, Citron, Meyer Benedict, and Maurice G. Meixler were officers or directors of the Duell Building and Loan Association; that he had further ascertained that Samuel Citron was secretary of the Glenwood Industrial Alcohol Distillery in 1921, 1922, and 1923; that on April 26, 1923, the witness and Agent Quigley had seized 20 barrels of alcohol being transported on a truck belonging to that distillery and had arrested one Petgen, the driver, who pleaded guilty in Philadelphia; that in 1923 the same agents seized 26 barrels of alcohol, and the plant ceased operations, its permit had been revoked, and it was still closed, as the result of that seizure. As to Meyer Benedict, the witness testified that his investigation disclosed that Benedict was a former permit holder whose permit had been revoked for violation of the National Prohibition Act in 1921, and that there had been a large assessment of taxes which had been compromised by the permittee.

Regarding Maurice G. Meixler, the witness stated that as the result of a case made against him by the witness and Agent Quigley, Meixler, as vice president of the Sherwood Distillery Company, was then under indictment charged with the illegal sale on counterfeit paper of 3,000 cases of whiskey and 50 barrels of whiskey; that the permit of a branch warehouse of the Sherwood Company had as a consequence been revoked, and a tax assessed because of such unlawful diversion of liquor had been compromised and settled for a large amount. With reference to Samuel Lazarre, the witness said that Lazarre had held a basic permit as an agency of Fleishman Industrial Distilling Company, which had been investigated by the witness and Agent Quigley; that as the result of evidence showing the disposition of several thousand gallons of alcohol on counterfeit paper the permit had been revoked. Concluding his testimony, the witness testified that of his own knowledge Sidell, named by him as one of the officers or directors of the Duell Association, was president of the Penn Distilling Company and was then under indictment for conspiracy to violate the National Prohibition Act. (R. 19-21.)

On cross-examination Agent Connor admitted that except for the association, as directors of the Duell Association, between Bogash, Klutsch, and Alperdt, on the one hand, and the other officers or directors of that company referred to by the witness, he knew nothing against the said directors of the Ma-King Company.

Agent Quigley, when called by the Government, merely testified, for the sake of brevity, that his testimony would support the testimony and averments of Agent Connor.

*Further testimony of Bogash*

Bogash, recalled by the complainant, stated that the activities of the Duell Association were entirely separate and distinct from those of the other three building and loan associations for which he acted as conveyancer; that in witnessing the signature of Benedict to the latter's application for a permit, the witness knew nothing about the substance of the application and signed as witness because he had placed the accompanying bond with the Fidelity Company which he represented. (R. 24-25.)

